

TTAB

STATEK CORPORATION,

v.

Respondent.

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on

(Date)

~~Raphael A. Gutiérrez~~

ATT: BOX TTAB NO FEE

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

I. INTRODUCTION

II. FACTS

-1-

referred to as the "STATEK marks"). *See* Gutiérrez Decl., ¶¶ 2,3. Opposer's grounds for opposition are that Applicant's Application creates a likelihood of confusion with Opposer's STATEK marks. *See* 15 U.S.C. § 1063. Applicant has also filed a Motion for Summary Judgment concurrently herewith.

III. ARGUMENT

Where a party fails to timely answer interrogatories or respond to document requests, the requesting party may move for an order compelling the disobedient party to respond to outstanding discovery. *See* 37 C.F.R. § 2.120(e) and TBMP §§ 411.01, 527.04. Opposer timely propounded its First Set of Interrogatories and First Request for Production of Documents (collectively, "Discovery Requests") to Respondent on August 13, 2003. *See* Helmle Decl. ¶3. The answers and responses were due on or before September 17, 2003. When Opposer received no response to its discovery requests, its attorney, Mr. Raphael A. Gutiérrez, faxed another letter to Applicant's counsel on October 2, 2003, inquiring as to whether Applicant planned on responding to Opposer's discovery requests. *See* Gutiérrez Decl. ¶4. The letter requested that Applicant respond to Opposer by October 6, 2003. When Opposer received no response to this letter, Mr. Gutiérrez called counsel for Applicant, Mr. Klaus Bach, on October 10, 2003. *See id.* at ¶ 5. Mr. Bach stated that he had not heard from Applicant and did not know whether Applicant would be responding to Opposer's discovery requests. *See id.* Mr. Gutiérrez advised Mr. Bach that Applicant would be filing a Motion to Compel and a Motion for Summary Judgment. *See id.* at ¶ 5. Mr. Gutiérrez then sent a letter to Mr. Bach confirming Mr. Bach's statements and again advising Mr. Bach of Applicant's intent to file a Motion to Compel and a Motion for Summary Judgment. *See id.* at ¶ 6.

Since Applicant has not responded to Opposer's Discovery Requests and Opposer does not know whether Applicant will be responding at all, Applicant respectfully requests that, pursuant to 37 C.F.R. § 2.120(e) and TBMP § 411.01, the Board compel Applicant to respond to its (1) First Set of Interrogatories, and to its (2) First Requests for Production of Documents.

CONCLUSION

For the foregoing reasons, Opposer believes that it has satisfied the requirements of TBMP § 523.02 and respectfully requests that its Motion to Compel be granted and that the Board require Applicant to respond to Opposer's First Set of Interrogatories and its First Request for Production of Documents. In addition, Opposer respectfully requests that the Board suspend proceedings in this case pending the determination of this Motion, pursuant to 37 C.F.R. § 2.120(e)(2).

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 10.10.03

By: 

Raphael A. Gutiérrez

2040 Main Street

Fourteenth Floor

Irvine, CA 92614

(949) 760-0404

Attorneys for Opposer, Statek Corporation

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Opposer's Motion To Compel Answers To Interrogatories And Production Of Documents upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on October 10, 2003, addressed as follows:

Klaus J. Bash
Klaus J. Bash & Associates
4407 Twin Oaks Drive
Murrysville, PA 15668-9447

Raphael A. Gutiérrez

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STATEK CORPORATION,

Opposer,

v.

 DIPL. -ING RAINER PULS AND
 DIPL. -ING OLIVER PULS,

Applicant.

) Opposition No.: 91154712

) Mark: STATEC

) Serial No.: 76/202,322

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10-14-2003

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #78

**DECLARATION OF LISA HELMLE IN SUPPORT OF OPPOSER'S MOTION TO
COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

Assistant Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, VA 22202-3514

ATT: BOX TTAB NO FEE

Dear Sir:

I, Lisa Helmle, declare as follows:

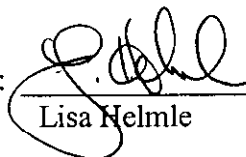
1. I am a trademark paralegal with Knobbe, Martens, Olson & Bear LLP (the "Knobbe Firm"), intellectual property counsel for the Opposer, Statek Corporation, ("Opposer") in the above-identified Opposition proceeding. I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify as set forth below.

2. Opposer filed a Notice of Opposition against Applicant's Application on January 7, 2003. Opposer filed such Opposition based on Opposers' prior and senior use and registrations of the mark STATEK and STATEK and Design.

3. Opposer served its First Set of and First Requests for Production of Documents on Applicant on August 13, 2003. Opposer also served it First Set of Interrogatories on Applicant that same day. True and correct copies of Opposer's Discovery Requests are attached hereto as Exhibits A, and B, respectively.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Dated: October 10, 2003

By: 
Lisa Helmle

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Exhibit A

TRADEMARK

STATEK CORPORATION

Opposition No. 91154712

Opposer,

V.

DIPL.-ING RAINER PULS AND
DIPL.-ING. OLIVER PULS

Applicant.

OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1-15

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and the applicable Federal Rules of Civil Procedure, Applicant is hereby required to answer separately and fully, in writing and under oath, each of the following Interrogatories:

DEFINITIONS

1. The term "Applicant" shall mean Dipl.-Ing Rainer Puls and Dipl.-Ing. Oliver Puls and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country, as well as any related companies.

2. The term "Opposer" shall mean Statek Corporation and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country, as well as any related companies.

3. The term "you" shall mean the party or person to whom the Interrogatory is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded has the right to or does control or direct any activities.

4. The term "document" shall mean written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) letters, notes, memoranda, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or discs capable of being mechanically read, advertising or promotional literature, operating manuals or instructions bulletins, cables or telegrams, tape or other recordings, test data and reports.

5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

6. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

7. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

GENERAL INSTRUCTIONS

8. In multi-part Interrogatories, the separate parts of such Interrogatories are to be read in the context of the entire Interrogatory, but each part is to be answered separately.

9. All requests contained in the following Interrogatories to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by

telephone, mail, and to serve legal documents on such person. If such a person is a natural person, state his or her:

- a. full name;
- b. current business and residence addresses, including telephone numbers;
- c. present employer, occupation, and position;
- d. a brief description of the job responsibilities of such person; and
- e. a brief description of the responsibilities of such person with the pertinent organization, if a person other than a natural person by stating;

(1) its full name or designation,

(2) the legal classification of the entity (e.g., corporation, partnership, etc.),

giving the state of incorporation where appropriate,

(3) the principal place of business,

(4) the current or last known address and telephone number of the organization, and

(5) any other information reasonably necessary to permit efficient contact with the organization.

10.- If you claim that any information requested is privileged, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response or Production of each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;
- b. the author of the document;

c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed; and

d. the date of the document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

11. Applicant's responses to the following Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 1:

Briefly state the nature of the business conducted by Applicant.

INTERROGATORY NO. 2:

Identify each person who is or has been an officer, director or principal of Applicant, who has knowledge of the Applicant's use of the mark STATEC or any variation thereof and the time period during which each such person held that position.

INTERROGATORY NO. 3:

Describe in detail all goods and/or services in conjunction with which the mark STATEC or any variation thereof has been or is currently being used by Applicant, any franchisee or other authorized user of the STATEC mark.

INTERROGATORY NO. 4:

With regard to each of the goods and services identified in response to Interrogatory No. 3, provide the date under which the STATEC mark or any variation thereof was first used, as to both interstate and intrastate commerce.

INTERROGATORY NO. 5:

With respect to each of the goods and services identified in response to Interrogatory No. 3, specify whether the STATEC mark is currently being used by Applicant, any franchisee, or authorized user in the United States in conjunction therewith.

INTERROGATORY NO. 6:

With respect to each of the goods and services identified in response to Interrogatory No. 3, state the annual sales in units and dollars from inception.

INTERROGATORY NO. 7:

With respect to each of the goods and services identified in response to Interrogatory No. 3, describe in detail the manner in which the STATEC mark is advertised and/or promoted in the United States.

INTERROGATORY NO. 8:

Identify the person or persons who, from the date of Applicant's first use of the STATEC mark to the present, have been responsible for the marketing and/or promotion of goods and/or services under the STATEC mark indicating the period during which each person was so responsible.

INTERROGATORY NO. 9:

Identify all advertising agencies, public relations agencies or market research agencies which Applicant has used, participated with or cooperated with in advertising, marketing or

promoting the goods and services identified in response to Interrogatory No. 2, and indicate the time period(s) during which such activities were conducted.

INTERROGATORY NO. 10:

Describe in detail every search or investigation conducted by or on behalf of Applicant in connection with the STATEC mark or Opposer's STATEK mark including any search of the records of the U.S. Patent and Trademark Office, or of any other records or publications.

INTERROGATORY NO. 11:

Describe in detail the circumstances, including the date, under which the Applicant first acquired knowledge of Opposer's marks as identified in the Notice of Opposition.

INTERROGATORY NO. 12:

Describe in detail every instance of actual or possible confusion, or any reports of such confusion, of which the Applicant is aware between Opposer's goods or services marketed under the mark STATEK and Applicant's goods or services marketed under the STATEC mark.

INTERROGATORY NO. 13:

Describe in detail every instance in which Applicant has ever disclaimed any association with Opposer in connection with Applicant's use of the STATEC mark.

INTERROGATORY NO. 14:

Describe in detail the nature of every objection made by Applicant to the use by others of any trademark or service mark believed by Applicant to be confusingly similar to the STATEC mark, including, without limitation, the mark objected to, the goods or services with which the mark is or was used, the date of the objection and the identity of the person to whom the objection was made.

INTERROGATORY NO.15:

Identify any third party trademarks or service marks known by Applicant which employ the STATEC mark or the mark STATEK or any variations thereof.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 13, 2003

By: 

Jeffrey L. Van Hoosear
620 Newport Center Drive
Sixteenth Floor
Newport Beach, CA 92660
(949) 760-0404

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1-15 upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on August 13, 2003, addressed as follows:

Klaus J. Bach
Klaus J. Bach & Associates
4407 Twin Oaks Drive
Murrysville, PA 15668-9447

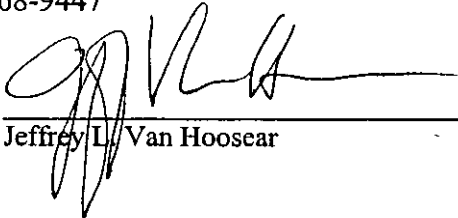

Jeffrey L. Van Hoosear

Exhibit B

TRADEMARK

STATEK CORPORATION

Opposition No. 91154712

Opposer,

V.

DIPL.-ING RAINER PULS AND
DIPL.-ING. OLIVER PULS

Applicant.

- 1 -

representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country.

2. The term "Opposer" shall mean Statek Corporation and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country.

3. The term "you" or "your" shall mean the party or person to whom this Request is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded has the right to or does control or direct any activities.

4. The term "document" shall mean written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) letters, notes, memoranda, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or discs capable of being mechanically read, advertising or promotional literature, operating manuals or instructions bulletins, cables or telegrams, tape or other recordings, test data and reports.

5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

6. The term "person" shall include both natural persons or any corporate or other business entities, legal or governmental entities, or association, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

7. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

8. The terms "all" and "each" shall be construed to include all and each.

9. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or."

10. The use of the singular form of any word also includes the plural and *vice versa*.

11. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

GENERAL INSTRUCTIONS

12. If you claim that any information requested is privileged, please provide all information falling within the scope of the Request which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response for Production of each item, document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;
- b. the author of the document;
- c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed; and
- d. the date of the document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

13. Applicant responses to the following Requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

14. You are to produce the original and all copies of each requested document and thing, as well as the file in which they are kept, including all copies which bear any additional file stamps, marginal notes, or other additional markings or writings that do not appear on the original.

15. Complete production is to be made on the date and at the time indicated above. The inspection and copying will begin at that time and will continue from day-to-day thereafter until completed.

16. Applicant has a duty to supplement its responses from now until the time of hearing or trial, as provided by Rule 26(e) of the Federal Rules of Civil Procedure.

REQUEST FOR PRODUCTION OF DOCUMENTS

The Applicant is requested to produce:

1. Representative samples of documents referring or relating to the selection, adoption, or first use of the STATEC trademark, including, but not limited to, all invoices, advertisements, brochures, labels, tags, points of display advertising, trademark searches, surveys, or studies.

2. Representative samples of documents referring or relating to any variations of the STATEC mark and/or the goods or services upon which such variations were used, including but not limited to, invoices, advertisements, promotional materials, brochures, tags, labels, packaging, containers, or point of sale displays.

3. Representative samples of documents and things concerning your past, present use, or plans for future use of the STATEC mark or any marks similar to STATEC.

4. Representative samples of documents relating or referring to or tending to show annual sales of Applicant's goods or services on which the mark STATEC or any variation thereof has been used in both units and dollars from inception.

5. Representative samples of documents relating or referring to any discontinuation of the STATEC mark since its initial adoption.

6. Representative samples of documents referring or relating to or tending to show how the STATEC mark was used, advertised or promoted in the U.S., since the date of its initial

adoption, including brochures, newspaper articles, advertisements, magazine or trade journal articles, and radio or television ads.

7. All labels, tags, packaging, containers, catalogs, or printed materials showing use of Applicant's STATEC mark since its initial adoption.

8. Representative samples of documents referring or relating to or tending to show advertising expenditures incurred by Applicant under the mark STATEC since inception.

9. Representative samples of documents evidencing, relating or referring to, authorizations or agreements with third parties involving the STATEC mark or any variation thereof, including but not limited to, all licenses, franchise agreements, or manufacturing agreements.

10. Representative samples of documents referring or relating to advertising conducted by authorized users of the STATEC mark or any variation thereof.

11. Representative samples of documents referring or relating to, or tending to show, the amount of money spent by any authorized users on advertisements for the STATEC mark or any variation thereof.

12. Representative samples of documents referring or relating to Applicant's channels of distribution to ultimate consumers.

13. Representative samples of documents referring or relating to plans for steps toward expansion by Applicant of the number of products and services under which the mark STATEC is used or to alter the present channels of distribution, or to sell to persons other than Applicant's present purchasers.

14. Representative samples of documents referring or relating to any search or investigation of records of the U.S. Patent and Trademark Office or any other records or

publications in connection with the adoption, use or application for registration of the STATEC mark or any variation thereof.

15. Representative samples of documents referring or relating to any reports of the results of any search or investigation in connection with the STATEC mark or any variation thereof or Opposer's STATEK mark.

16. Representative samples of documents referring or relating to any claimed predecessor in title to the STATEC mark or any variation thereof.

17. Representative samples of documents referring or relating to any attempt by Applicant to register the STATEC mark (other than the case in issue) or any variation thereof under the laws of any state or before the U.S. Patent and Trademark Office.

18. Representative samples of documents referring or relating to the Applicant's first knowledge of Opposer's STATEK mark.

19. Representative samples of documents referring or relating to Opposer or its predecessors, or to the use of STATEK by Opposer.

20. Representative samples of documents referring or relating to or tending to show any possible or actual confusion between Applicant's STATEC trademark and Opposer's STATEK trademark.

21. Representative samples of documents referring or relating to or tending to show any possible or actual confusion between Applicant's goods and services and Opposer's goods and services.

22. Representative samples of documents referring or relating to any communication received by Applicant which was intended for Opposer.

23. Representative samples of documents referring or relating to or tending to show a disclaimer made by Applicant as to an association with Opposer in connection with its STATEC trademark.

24. Representative samples of documents referring or relating to any adversarial proceeding involving the STATEC mark or any variation thereof before the T.T.A.B., Bureau of Customs, F.T.C., any court or any foreign trademark office or court.

25. Representative samples of documents referring or relating to any objection raised to Applicant's use or registration of the STATEC mark, by any third party apart from the present proceeding.

26. Representative samples of documents referring or relating to any objections made by Applicant to the use by others, of marks believed by Applicant to be confusingly similar to its STATEC mark.

27. Representative samples of documents and things concerning your efforts to enforce your rights in the STATEC mark against any third persons other than the Opposer.

28. Representative samples of documents and things concerning dates of continuous use of the STATEC mark to identify each of your products and services.

29. Representative samples of documents and things concerning the commercial impression you intend the STATEC mark to have.

30. Representative samples of documents and things concerning your attendance at trade shows and your use of the STATEC mark at trade shows, including but not limited, trade show displays and advertising in connection with trade shows.

31. All magazine, newspaper, trade journal articles and other publications in any medium that concern your products and services identified by the STATEC mark.

32. Representative samples of documents and things concerning the types, characteristics, geographic markets, classes or identities of persons who purchase or obtain your products and services identified by the STATEC mark.

33. Representative samples of documents and things concerning the number of units and dollar value of your products and services identified by the STATEC mark you have sold each month and each year.

34. Representative samples of documents and things concerning studies, tests, ratings or surveys in connection with quality and performance of your products and services identified with the STATEC mark.

35. Representative samples of documents and things concerning studies, tests or surveys in connection with consumer recognition of the STATEC mark and consumer recognition of your products and services identified with your STATEC mark.

36. Representative samples of documents and things concerning business plans, including but not limited to marketing plans, advertising plans, and business forecasts, for your products and services identified with the STATEC mark.

37. Representative samples of documents and things concerning your policies regarding retention, storage, filing and destruction of documents and things.

38. Representative samples of documents referring or relating to or identifying any marks or service marks known by Applicant which employ the terms STATEK or STATEC or any variation thereof.

39. Representative samples of documents referring or relating to or comprising of any investigation conducted on behalf of Applicant in connection with the STATEC mark or Opposer's STATEK mark.

40. Representative samples of documents referring or relating to any survey conducted on Applicant's behalf relating to the STATEC TECHNOLOGIES mark or Opposer's STATEK trademark.

41. Representative samples of documents referring or relating to the transfer of U.S. Trademark Registration No. 1,476,456 to Applicant.

42. Representative samples of documents identified in response to Opposer's First Set of Interrogatories.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 13, 2003

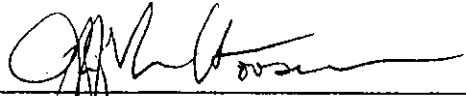
By: 

Jeffrey L. Van Hoosear
620 Newport Center Drive
Sixteenth Floor
Newport Beach, CA 92660
(949) 760-0404

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 1-42 upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on August 13, 2003, addressed as follows:

Klaus J. Bach
Klaus J. Bach & Associates
4407 Twin Oaks Drive
Murrysville, PA 15668-9447


Jeffrey L. Van Hoosear

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STATEK CORPORATION,

Opposer,

v.

 DIPL. -ING RAINER PULS AND
 DIPL. -ING OLIVER PULS,

Applicant.

) Opposition No.: 91154712

) Mark: STATEK

) Serial No.: 76/202,322



10-14-2003

U.S. Patent & TMO/c/TM Mail Rpt Dt. #78

**DECLARATION OF RAPHAEL A. GUTIÉRREZ IN SUPPORT OF OPPOSER'S MOTION
TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION OF
DOCUMENTS**

Assistant Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, VA 22202-3514

ATT: BOX TTAB NO FEE

Dear Sir:

I, Raphael A. Gutiérrez, declare as follows:

1. I am an associate with Knobbe, Martens, Olson & Bear LLP (the "Knobbe Firm"), intellectual property counsel for the Opposer, Statek Corporation, ("Opposer") in the above-identified Opposition proceeding. I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify as set forth below.

2. Opposer is the owner of U.S. Trademark Registration No. 2,241,565 (the "'565 Registration") for the STATEK and Design mark in connection with electronic timing devices. This registration is derived from an application filed on December 4, 1997 based on Opposer's use of the mark in commerce. This registration claims a date of first use of January 1971 and proceeded to registration on April 27, 1999. A true and correct copy of the '565 Registration is attached hereto as Exhibit A.

3. Opposer is also the owner of U.S. Trademark Registration No. 2,245,679 (the "'679 Registration") for the mark STATEK in connection with electronic timing devices. This registration is derived from an application filed on December 4, 1997 based on Opposer's use of the mark in commerce. This registration claims a date of first use of January 1971 and proceeded to registration on May 18, 1999. A true and correct copy of the '679 Registration is attached hereto as Exhibit B.

4. On October 2, 2003, I sent counsel for Applicant a Letter ("Letter"). The Letter advised counsel for Applicant that responses to Opposer's Discovery Requests had not been received and requested that Applicant respond to Opposer's Discovery Requests. A true and correct copy of the Letter is attached hereto as Exhibit C.

5. On October 10, 2002, I phoned counsel for Applicant. I advised counsel for Applicant that a response to Opposer's Discovery Requests had not been received and requested that Applicant respond to Opposer's Discovery Requests. Counsel for Applicant advised me that he did not know whether Applicant would be responding to Opposer's Discovery Requests. In response, I advised Mr. Bach of Applicant's intention to file a Motion to Compel the discovery responses, as well as its intention to file a Motion for Summary Judgment.

6. After our telephone conversation, I sent a letter to Mr. Bach, confirming that he did not know whether his client would be responding to Opposer's Discovery Requests and advising him again

of Opposer's intention to file a Motion to Compel and a Motion for Summary Judgement. A true and correct copy of said letter is attached hereto as Exhibit D.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Dated: October 10, 2003

By: 
Raphael A. Gutierrez

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101003

Exhibit A

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,241,565

Registered Apr. 27, 1999

TRADEMARK
PRINCIPAL REGISTER



STATEK CORPORATION (CALIFORNIA CORPORATION)
512 N. MAIN STREET
ORANGE, CA 92868

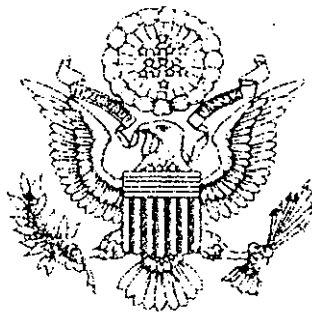
FIRST USE 1-0-1971; IN COMMERCE
1-0-1971.

SER. NO. 75-400,067, FILED 12-4-1997.

FOR: ELECTRONIC TIMING DEVICES,
NAMELY CRYSTALS AND OSCILLATORS, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

CHERYL STEPLIGHT, EXAMINING ATTORNEY

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



J. Todd Pichini

Acting Commissioner of Patents and Trademarks

Exhibit B

D O
Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,245,679
Registered May 18, 1999

**TRADEMARK
PRINCIPAL REGISTER**

STATEK

STATEK CORPORATION (CALIFORNIA CORPORATION)
512 N. MAIN STREET
ORANGE, CA 92868

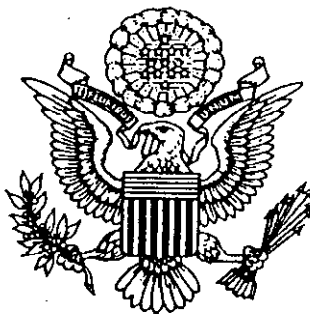
FIRST USE 1-0-1971; IN COMMERCE
1-0-1971.

SER. NO. 75-400,066, FILED 12-4-1997.

FOR: ELECTRONIC TIMING DEVICES,
NAMELY CRYSTALS AND OSCILLATORS, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

CHERYL STEPLIGHT, EXAMINING ATTORNEY

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



L. Todd Pichini

Acting Commissioner of Patents and Trademarks

Exhibit C

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.kmob.com

Raphael A. Gutiérrez
rgutierrez@kmob.com

October 2, 2003
VIA FACSIMILE

Klaus Bach
KLAUS J. BACH & ASSOCIATES
4407 Twin Oaks Drive
Murrysville, PA 15668-9447

Re: Statek Corporation v. Dipl.-Ing Rainer Puls
Opposition No.: 91154712
Mark: STATEC
Our Reference: STATEK.013M

Dear Mr. Bach:


I have been working with Jeffrey L. Van Hoosear on the aforementioned matter. On August 13, 2003 we served the following discovery requests upon you in connection with the aforementioned matter:

- Opposer's First Set of Requests for Production of Documents Nos. 1-42, and
- Opposer's First Set of Interrogatories Nos. 1-15.

Responses to those discovery requests were due on September 17, 2003, pursuant to § 403.03 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") and 37 C.F.R. § 2.120(a). To date we have not received any responsive documents from you or your client. We would like to know if you plan on responding to those requests and, if so, when we might expect those responses. Please note that the address listed in the Requests for Production of Documents is incorrect and should be the same as the 2040 Main Street address on this letter. Please provide us with a response to this letter no later than October 6, 2003.

Please call me with any questions.

Sincerely,



Raphael A. Gutiérrez

Exhibit D

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.kmob.com

Raphael A. Gutiérrez
rgutierrez@kmob.com

October 10, 2003
VIA FACSIMILE

Klaus Bach
KLAUS J. BACH & ASSOCIATES
4407 Twin Oaks Drive
Murrysville, PA 15668-9447

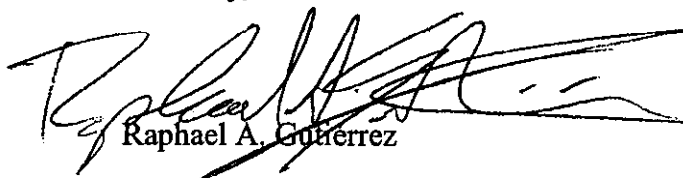
Re: Statek Corporation v. Dipl.-Ing Rainer Puls
Opposition No.: 91154712
Mark: STATEC
Our Reference: STATEK.013M

Dear Mr. Bach:

The purpose of this letter is to confirm the details of our telephone conversation earlier today. During our conversation you advised me that you had received our letter dated October 2, 2003 inquiring as to the status of your clients' discovery responses. You informed me that you had not spoken to your client, but that you did not think your client would be filing a response.

As such, I advised you of Statek's intention to file a Motion to Compel a response to its discovery requests. Such motion will be filed today along with Statek's Motion for Summary Judgment.

Sincerely,



Raphael A. Gutiérrez

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101003

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STATEK CORPORATION,

Opposer,

v.

DIPL. -ING RAINER PULS AND
DIPL. -ING OLIVER PULS,

Applicant.

) Opposition No.: 91154712

) Mark: STATEC

) Serial No.: 76/202,322

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10-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

**DECLARATION OF LISA HELMLE IN SUPPORT OF OPPOSER'S MOTION TO
COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

ATT: BOX TTAB NO FEE

Dear Sir:

I, Lisa Helmle, declare as follows:

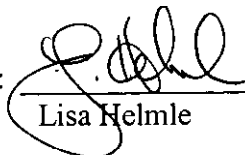
1. I am a trademark paralegal with Knobbe, Martens, Olson & Bear LLP (the "Knobbe Firm"), intellectual property counsel for the Opposer, Statek Corporation, ("Opposer") in the above-identified Opposition proceeding. I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify as set forth below.

2. Opposer filed a Notice of Opposition against Applicant's Application on January 7, 2003. Opposer filed such Opposition based on Opposers' prior and senior use and registrations of the mark STATEK and STATEK and Design.

3. Opposer served its First Set of and First Requests for Production of Documents on Applicant on August 13, 2003. Opposer also served it First Set of Interrogatories on Applicant that same day. True and correct copies of Opposer's Discovery Requests are attached hereto as Exhibits A, and B, respectively.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Dated: October 10, 2003

By: 
Lisa Helmle

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101003

Exh A

TRADEMARK

STATEK CORPORATION

Opposition No. 91154712

Opposer,

V.

DIPL.-ING RAINER PULS AND
DIPL.-ING. OLIVER PULS

Applicant.

OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1-15

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and the applicable Federal Rules of Civil Procedure, Applicant is hereby required to answer separately and fully, in writing and under oath, each of the following Interrogatories:

DEFINITIONS

1. The term “Applicant” shall mean Dipl.-Ing Rainer Puls and Dipl.-Ing. Oliver Puls and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country, as well as any related companies.

2. The term "Opposer" shall mean Statek Corporation and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country, as well as any related companies.

3. The term "you" shall mean the party or person to whom the Interrogatory is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded has the right to or does control or direct any activities.

4. The term "document" shall mean written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) letters, notes, memoranda, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or discs capable of being mechanically read, advertising or promotional literature, operating manuals or instructions bulletins, cables or telegrams, tape or other recordings, test data and reports.

5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

6. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

7. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

GENERAL INSTRUCTIONS

8. In multi-part Interrogatories, the separate parts of such Interrogatories are to be read in the context of the entire Interrogatory, but each part is to be answered separately.

9. All requests contained in the following Interrogatories to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by

telephone, mail, and to serve legal documents on such person. If such a person is a natural person, state his or her:

- a. full name;
- b. current business and residence addresses, including telephone numbers;
- c. present employer, occupation, and position;
- d. a brief description of the job responsibilities of such person; and
- e. a brief description of the responsibilities of such person with the pertinent organization, if a person other than a natural person by stating;

(1) its full name or designation,

(2) the legal classification of the entity (e.g., corporation, partnership, etc.),
giving the state of incorporation where appropriate,

(3) the principal place of business,

(4) the current or last known address and telephone number of the
organization, and

(5) any other information reasonably necessary to permit efficient contact
with the organization.

10.- If you claim that any information requested is privileged, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response or Production of each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;
- b. the author of the document;

c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed; and

d. the date of the document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

11. Applicant's responses to the following Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 1:

Briefly state the nature of the business conducted by Applicant.

INTERROGATORY NO. 2:

Identify each person who is or has been an officer, director or principal of Applicant, who has knowledge of the Applicant's use of the mark STATEC or any variation thereof and the time period during which each such person held that position.

INTERROGATORY NO. 3:

Describe in detail all goods and/or services in conjunction with which the mark STATEC or any variation thereof has been or is currently being used by Applicant, any franchisee or other authorized user of the STATEC mark.

INTERROGATORY NO. 4:

With regard to each of the goods and services identified in response to Interrogatory No. 3, provide the date under which the STATEC mark or any variation thereof was first used, as to both interstate and intrastate commerce.

INTERROGATORY NO. 5:

With respect to each of the goods and services identified in response to Interrogatory No. 3, specify whether the STATEC mark is currently being used by Applicant, any franchisee, or authorized user in the United States in conjunction therewith.

INTERROGATORY NO. 6:

With respect to each of the goods and services identified in response to Interrogatory No. 3, state the annual sales in units and dollars from inception.

INTERROGATORY NO. 7:

With respect to each of the goods and services identified in response to Interrogatory No. 3, describe in detail the manner in which the STATEC mark is advertised and/or promoted in the United States.

INTERROGATORY NO. 8:

Identify the person or persons who, from the date of Applicant's first use of the STATEC mark to the present, have been responsible for the marketing and/or promotion of goods and/or services under the STATEC mark indicating the period during which each person was so responsible.

INTERROGATORY NO. 9:

Identify all advertising agencies, public relations agencies or market research agencies which Applicant has used, participated with or cooperated with in advertising, marketing or

promoting the goods and services identified in response to Interrogatory No. 2, and indicate the time period(s) during which such activities were conducted.

INTERROGATORY NO. 10:

Describe in detail every search or investigation conducted by or on behalf of Applicant in connection with the STATEC mark or Opposer's STATEK mark including any search of the records of the U.S. Patent and Trademark Office, or of any other records or publications.

INTERROGATORY NO. 11:

Describe in detail the circumstances, including the date, under which the Applicant first acquired knowledge of Opposer's marks as identified in the Notice of Opposition.

INTERROGATORY NO. 12:

Describe in detail every instance of actual or possible confusion, or any reports of such confusion, of which the Applicant is aware between Opposer's goods or services marketed under the mark STATEK and Applicant's goods or services marketed under the STATEC mark.

INTERROGATORY NO. 13:

Describe in detail every instance in which Applicant has ever disclaimed any association with Opposer in connection with Applicant's use of the STATEC mark.

INTERROGATORY NO. 14:

Describe in detail the nature of every objection made by Applicant to the use by others of any trademark or service mark believed by Applicant to be confusingly similar to the STATEC mark, including, without limitation, the mark objected to, the goods or services with which the mark is or was used, the date of the objection and the identity of the person to whom the objection was made.

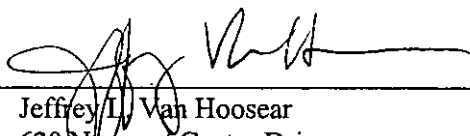
INTERROGATORY NO.15:

Identify any third party trademarks or service marks known by Applicant which employ the STATEC mark or the mark STATEK or any variations thereof.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

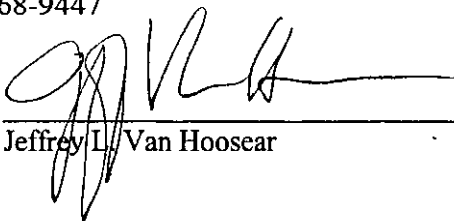
Dated: August 13, 2003

By: 
Jeffrey L. Van Hoosear
620 Newport Center Drive
Sixteenth Floor
Newport Beach, CA 92660
(949) 760-0404

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1-15 upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on August 13, 2003, addressed as follows:

Klaus J. Bach
Klaus J. Bach & Associates
4407 Twin Oaks Drive
Murrysville, PA 15668-9447


Jeffrey L. Van Hoosear

gth B

TRADEMARK

STATEK CORPORATION

Opposition No. 91154712

Opposer,

v.

DIPL.-ING RAINER PULS AND
DIPL.-ING. OLIVER PULS

Applicant.



10-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

Pursuant to the Rules of Practice 2.120, Trademark Trial and Appeal Board of Manual of Procedure § 406 and Federal Rules of Civil Procedure 33, Opposer requests that you produce for inspection and copying the documents and things listed below at the offices of Knobbe, Martens, Olson & Bear, LLP, 620 Newport Center Drive, 16th Floor, Newport Beach, CA thirty days from the date of service of this request.

For the purposes of this request for production of documents and things, the following instructions shall apply and the following terms will have the meaning indicated:

DEFINITIONS

1. The term "Applicant" shall mean Dipl.-Ing Rainer Puls and Dipl.-Ing. Oliver Puls, and any present or former officer, director, employee, servant, agent, attorney or other

representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country.

2. The term "Opposer" shall mean Statek Corporation and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country.

3. The term "you" or "your" shall mean the party or person to whom this Request is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded has the right to or does control or direct any activities.

4. The term "document" shall mean written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) letters, notes, memoranda, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or discs capable of being mechanically read, advertising or promotional literature, operating manuals or instructions bulletins, cables or telegrams, tape or other recordings, test data and reports.

5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

6. The term "person" shall include both natural persons or any corporate or other business entities, legal or governmental entities, or association, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

7. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

8. The terms "all" and "each" shall be construed to include all and each.

9. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or."

10. The use of the singular form of any word also includes the plural and *vice versa*.

11. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

GENERAL INSTRUCTIONS

12. If you claim that any information requested is privileged, please provide all information falling within the scope of the Request which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response for Production of each item, document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;
- b. the author of the document;
- c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed; and
- d. the date of the document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

13. Applicant responses to the following Requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

14. You are to produce the original and all copies of each requested document and thing, as well as the file in which they are kept, including all copies which bear any additional file stamps, marginal notes, or other additional markings or writings that do not appear on the original.

15. Complete production is to be made on the date and at the time indicated above. The inspection and copying will begin at that time and will continue from day-to-day thereafter until completed.

16. Applicant has a duty to supplement its responses from now until the time of hearing or trial, as provided by Rule 26(e) of the Federal Rules of Civil Procedure.

REQUEST FOR PRODUCTION OF DOCUMENTS

The Applicant is requested to produce:

1. Representative samples of documents referring or relating to the selection, adoption, or first use of the STATEC trademark, including, but not limited to, all invoices, advertisements, brochures, labels, tags, points of display advertising, trademark searches, surveys, or studies.

2. Representative samples of documents referring or relating to any variations of the STATEC mark and/or the goods or services upon which such variations were used, including but not limited to, invoices, advertisements, promotional materials, brochures, tags, labels, packaging, containers, or point of sale displays.

3. Representative samples of documents and things concerning your past, present use, or plans for future use of the STATEC mark or any marks similar to STATEC.

4. Representative samples of documents relating or referring to or tending to show annual sales of Applicant's goods or services on which the mark STATEC or any variation thereof has been used in both units and dollars from inception.

5. Representative samples of documents relating or referring to any discontinuation of the STATEC mark since its initial adoption.

6. Representative samples of documents referring or relating to or tending to show how the STATEC mark was used, advertised or promoted in the U.S., since the date of its initial

adoption, including brochures, newspaper articles, advertisements, magazine or trade journal articles, and radio or television ads.

7. All labels, tags, packaging, containers, catalogs, or printed materials showing use of Applicant's STATEC mark since its initial adoption.

8. Representative samples of documents referring or relating to or tending to show advertising expenditures incurred by Applicant under the mark STATEC since inception.

9. Representative samples of documents evidencing, relating or referring to, authorizations or agreements with third parties involving the STATEC mark or any variation thereof, including but not limited to, all licenses, franchise agreements, or manufacturing agreements.

10. Representative samples of documents referring or relating to advertising conducted by authorized users of the STATEC mark or any variation thereof.

11. Representative samples of documents referring or relating to, or tending to show, the amount of money spent by any authorized users on advertisements for the STATEC mark or any variation thereof.

12. Representative samples of documents referring or relating to Applicant's channels of distribution to ultimate consumers.

13. Representative samples of documents referring or relating to plans for steps toward expansion by Applicant of the number of products and services under which the mark STATEC is used or to alter the present channels of distribution, or to sell to persons other than Applicant's present purchasers.

14. Representative samples of documents referring or relating to any search or investigation of records of the U.S. Patent and Trademark Office or any other records or

publications in connection with the adoption, use or application for registration of the STATEC mark or any variation thereof.

15. Representative samples of documents referring or relating to any reports of the results of any search or investigation in connection with the STATEC mark or any variation thereof or Opposer's STATEK mark.

16. Representative samples of documents referring or relating to any claimed predecessor in title to the STATEC mark or any variation thereof.

17. Representative samples of documents referring or relating to any attempt by Applicant to register the STATEC mark (other than the case in issue) or any variation thereof under the laws of any state or before the U.S. Patent and Trademark Office.

18. Representative samples of documents referring or relating to the Applicant's first knowledge of Opposer's STATEK mark.

19. Representative samples of documents referring or relating to Opposer or its predecessors, or to the use of STATEK by Opposer.

20. Representative samples of documents referring or relating to or tending to show any possible or actual confusion between Applicant's STATEC trademark and Opposer's STATEK trademark.

21. Representative samples of documents referring or relating to or tending to show any possible or actual confusion between Applicant's goods and services and Opposer's goods and services.

22. Representative samples of documents referring or relating to any communication received by Applicant which was intended for Opposer.

23. Representative samples of documents referring or relating to or tending to show a disclaimer made by Applicant as to an association with Opposer in connection with its STATEC trademark.

24. Representative samples of documents referring or relating to any adversarial proceeding involving the STATEC mark or any variation thereof before the T.T.A.B., Bureau of Customs, F.T.C., any court or any foreign trademark office or court.

25. Representative samples of documents referring or relating to any objection raised to Applicant's use or registration of the STATEC mark, by any third party apart from the present proceeding.

26. Representative samples of documents referring or relating to any objections made by Applicant to the use by others, of marks believed by Applicant to be confusingly similar to its STATEC mark.

27. Representative samples of documents and things concerning your efforts to enforce your rights in the STATEC mark against any third persons other than the Opposer.

28. Representative samples of documents and things concerning dates of continuous use of the STATEC mark to identify each of your products and services.

29. Representative samples of documents and things concerning the commercial impression you intend the STATEC mark to have.

30. Representative samples of documents and things concerning your attendance at trade shows and your use of the STATEC mark at trade shows, including but not limited, trade show displays and advertising in connection with trade shows.

31. All magazine, newspaper, trade journal articles and other publications in any medium that concern your products and services identified by the STATEC mark.

32. Representative samples of documents and things concerning the types, characteristics, geographic markets, classes or identities of persons who purchase or obtain your products and services identified by the STATEC mark.

33. Representative samples of documents and things concerning the number of units and dollar value of your products and services identified by the STATEC mark you have sold each month and each year.

34. Representative samples of documents and things concerning studies, tests, ratings or surveys in connection with quality and performance of your products and services identified with the STATEC mark.

35. Representative samples of documents and things concerning studies, tests or surveys in connection with consumer recognition of the STATEC mark and consumer recognition of your products and services identified with your STATEC mark.

36. Representative samples of documents and things concerning business plans, including but not limited to marketing plans, advertising plans, and business forecasts, for your products and services identified with the STATEC mark.

37. Representative samples of documents and things concerning your policies regarding retention, storage, filing and destruction of documents and things.

38. Representative samples of documents referring or relating to or identifying any marks or service marks known by Applicant which employ the terms STATEK or STATEC or any variation thereof.

39. Representative samples of documents referring or relating to or comprising of any investigation conducted on behalf of Applicant in connection with the STATEC mark or Opposer's STATEK mark.

40. Representative samples of documents referring or relating to any survey conducted on Applicant's behalf relating to the STATEC TECHNOLOGIES mark or Opposer's STATEK trademark.

41. Representative samples of documents referring or relating to the transfer of U.S. Trademark Registration No. 1,476,456 to Applicant.

42. Representative samples of documents identified in response to Opposer's First Set of Interrogatories.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 13, 2003

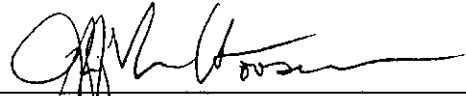
By: 

Jeffrey L. Van Hoosear
620 Newport Center Drive
Sixteenth Floor
Newport Beach, CA 92660
(949) 760-0404

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 1-42 upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on August 13, 2003, addressed as follows:

Klaus J. Bach
Klaus J. Bach & Associates
4407 Twin Oaks Drive
Murrysville, PA 15668-9447


Jeffrey L. Van Hoosear

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STATEK CORPORATION,

Opposer,

v.

DIPL. -ING RAINER PULS AND
 DIPL. -ING OLIVER PULS,

Applicant.

) Opposition No.: 91154712

) Mark: STATEK

) Serial No.: 76/202,322

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10-14-2003

U.S. Patent & TMOrc/TM Mail Rcpt Dt. #78

DECLARATION OF RAPHAEL A. GUTIÉRREZ IN SUPPORT OF OPPOSER'S MOTION
TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION OF
DOCUMENTS

Assistant Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, VA 22202-3514

ATT: BOX TTAB NO FEE

Dear Sir:

I, Raphael A. Gutiérrez, declare as follows:

1. I am an associate with Knobbe, Martens, Olson & Bear LLP (the "Knobbe Firm"), intellectual property counsel for the Opposer, Statek Corporation, ("Opposer") in the above-identified Opposition proceeding. I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify as set forth below.

2. Opposer is the owner of U.S. Trademark Registration No. 2,241,565 (the "'565 Registration") for the STATEK and Design mark in connection with electronic timing devices. This registration is derived from an application filed on December 4, 1997 based on Opposer's use of the mark in commerce. This registration claims a date of first use of January 1971 and proceeded to registration on April 27, 1999. A true and correct copy of the '565 Registration is attached hereto as Exhibit A.

3. Opposer is also the owner of U.S. Trademark Registration No. 2,245,679 (the "'679 Registration") for the mark STATEK in connection with electronic timing devices. This registration is derived from an application filed on December 4, 1997 based on Opposer's use of the mark in commerce. This registration claims a date of first use of January 1971 and proceeded to registration on May 18, 1999. A true and correct copy of the '679 Registration is attached hereto as Exhibit B.

4. On October 2, 2003, I sent counsel for Applicant a Letter ("Letter"). The Letter advised counsel for Applicant that responses to Opposer's Discovery Requests had not been received and requested that Applicant respond to Opposer's Discovery Requests. A true and correct copy of the Letter is attached hereto as Exhibit C.

5. On October 10, 2002, I phoned counsel for Applicant. I advised counsel for Applicant that a response to Opposer's Discovery Requests had not been received and requested that Applicant respond to Opposer's Discovery Requests. Counsel for Applicant advised me that he did not know whether Applicant would be responding to Opposer's Discovery Requests. In response, I advised Mr. Bach of Applicant's intention to file a Motion to Compel the discovery responses, as well as its intention to file a Motion for Summary Judgment.

6. After our telephone conversation, I sent a letter to Mr. Bach, confirming that he did not know whether his client would be responding to Opposer's Discovery Requests and advising him again

of Opposer's intention to file a Motion to Compel and a Motion for Summary Judgement. A true and correct copy of said letter is attached hereto as Exhibit D.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Dated: October 10, 2003

By: 
Raphael A. Gutierrez

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101003

Int. Cl.: 9

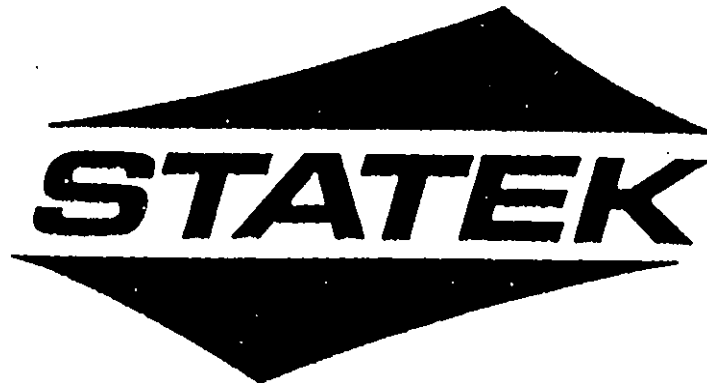
Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,241,565

Registered Apr. 27, 1999

TRADEMARK
PRINCIPAL REGISTER



STATEK CORPORATION (CALIFORNIA CORPORATION)
512 N. MAIN STREET
ORANGE, CA 92868

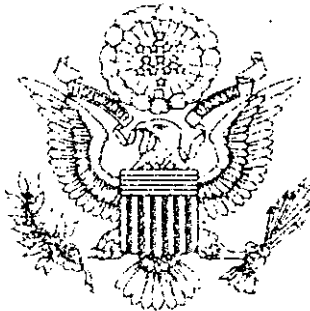
FIRST USE 1-0-1971; IN COMMERCE
1-0-1971.

SER. NO. 75-400,067, FILED 12-4-1997.

FOR: ELECTRONIC TIMING DEVICES,
NAMELY CRYSTALS AND OSCILLATORS, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

CHERYL STEPLIGHT, EXAMINING ATTORNEY

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



A handwritten signature in cursive script, reading "J. Todd Tschumi".

Acting Commissioner of Patents and Trademarks

D O
Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,245,679

Registered May 18, 1999

**TRADEMARK
PRINCIPAL REGISTER**

STATEK

STATEK CORPORATION (CALIFORNIA CORPORATION)
512 N. MAIN STREET
ORANGE, CA 92868

FIRST USE 1-0-1971; IN COMMERCE
1-0-1971.

SER. NO. 75-400,066, FILED 12-4-1997.

FOR: ELECTRONIC TIMING DEVICES,
NAMELY CRYSTALS AND OSCILLATORS, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

CHERYL STEPLIGHT, EXAMINING ATTORNEY

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

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A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



A. Todd Tschumi

Acting Commissioner of Patents and Trademarks

g x h c

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.kmob.com

Raphael A. Gutiérrez
rgutierrez@kmob.com

October 2, 2003
VIA FACSIMILE

Klaus Bach
KLAUS J. BACH & ASSOCIATES
4407 Twin Oaks Drive
Murrysville, PA 15668-9447

Re: Statek Corporation v. Dipl.-Ing Rainer Puls
Opposition No.: 91154712
Mark: STATEC
Our Reference: STATEK.013M

Dear Mr. Bach:

I have been working with Jeffrey L. Van Hoosear on the aforementioned matter. On August 13, 2003 we served the following discovery requests upon you in connection with the aforementioned matter:

- Opposer's First Set of Requests for Production of Documents Nos. 1-42, and
- Opposer's First Set of Interrogatories Nos. 1-15.

Responses to those discovery requests were due on September 17, 2003, pursuant to § 403.03 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") and 37 C.F.R. § 2.120(a). To date we have not received any responsive documents from you or your client. We would like to know if you plan on responding to those requests and, if so, when we might expect those responses. Please note that the address listed in the Requests for Production of Documents is incorrect and should be the same as the 2040 Main Street address on this letter. Please provide us with a response to this letter no later than October 6, 2003.

Please call me with any questions.

Sincerely,



Raphael A. Gutiérrez

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092603

gthd

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.kmob.com

Raphael A. Gutiérrez
rgutierrez@kmob.com

October 10, 2003
VIA FACSIMILE

Klaus Bach
KLAUS J. BACH & ASSOCIATES
4407 Twin Oaks Drive
Murrysville, PA 15668-9447

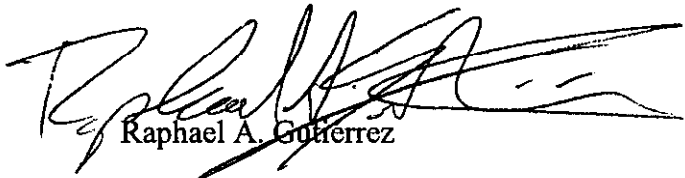
Re: Statek Corporation v. Dipl.-Ing Rainer Puls
Opposition No.: 91154712
Mark: STATEC
Our Reference: STATEK.013M

Dear Mr. Bach:

The purpose of this letter is to confirm the details of our telephone conversation earlier today. During our conversation you advised me that you had received our letter dated October 2, 2003 inquiring as to the status of your clients' discovery responses. You informed me that you had not spoken to your client, but that you did not think your client would be filing a response.

As such, I advised you of Statek's intention to file a Motion to Compel a response to its discovery requests. Such motion will be filed today along with Statek's Motion for Summary Judgment.

Sincerely,



Raphael A. Gutierrez

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101003

San Diego
619-235-8550

San Francisco
415-954-4114

Los Angeles
310-551-3450

Riverside
909-781-9231

San Luis Obispo
805-547-5580